



**ADJUDICATION ORDER IN TERMS OF SECTION 53
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Ref: CSOS 006916/GP/21

IN THE MATTER BETWEEN

HASAN MOHAMED

APPLICANT

and

TRUSTEES OF FAIR OAKS BODY CORPORATE

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
Section 39 (7) (b) In respect of general and other issues- (b) “any other order proposed by the chief ombud.”
- Date Adjudication conducted:
19 APRIL 2022.
- Name of the Adjudicator:
N. FOCA.

- Order:
 - (a) The relief sought by the Applicant is dismissed, in terms of **section 53(1) (a) of the CSOS Act.**
 - (b) No order as to costs.

INTRODUCTION

1. The Applicant is **HASAN MOHAMED**, the registered owner of unit 11 Fair Oakes, 88 Hausburg Avenue, Oakdene, Johannesburg, Gauteng Province.
2. The Respondents are the **TRUSTEES OF FAIR OAKES BODY CORPORATE**, a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), and to which it would be convenient to refer to as the “Body Corporate”.
3. A letter requesting final submissions was sent to the parties on the 8th of September 2021, confirming that due to the current situation regarding the Covid-19 pandemic, the CSOS is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
4. The parties were given 5-business days to make further submissions.
5. This is an application for dispute resolution in terms of section 38 of the Community Schemes Ombud Service Act 9 of 2011 (“the CSOS Act”). The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email.
6. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of Sections 39 (7) (b), **in respect of general and other issues.**
7. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution, 2019 as amended and more specifically the amended Practice Directive dated 23 June 2020 which provides under paragraph 8.2 “Adjudications will be

conducted on the papers filed by the parties and any further written submissions, documents and information as requested by the appointed Adjudicator". The parties were requested to make written submissions. The adjudication was conducted on the 19th of April 2022 and an order is now determined.

PRELIMINARY ISSUES

8. No preliminary issues were raised / (legal representation, points in limine).

RELEVANT STATUTORY PROVISIONS

9. Section 1 of the CSOS Act defines-

- "community scheme" as "any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing cooperative and "scheme" has the same meaning".
- "dispute" as "a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly".

11. Section 38 of the CSOS Act provides-

"Any person may make an application if such person is a party to or affected materially by a dispute".

12. Section 45(1) provides-

"The Ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the Ombud refers the application to an adjudicator".

13. Section 47 provides-

"On acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the Ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the Ombud must refer the matter to conciliation".

14. Section 48 (1) provides-

“If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

15. In terms of Section 50-

“The adjudicator must investigate an application to decide whether it would be appropriate to make an order.”

16. Section 51 provides for the investigative powers of the Adjudicator:

“(1) When considering the application, the adjudicator may-

(a) require the applicant, managing agent or relevant person-

(i) to give to the adjudicator further information or documentation;

(ii) to give information in the form of an affidavit or statement; or

(iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview;

(b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and

(c) enter and inspect-

(i) an association asset, record or other document;

(ii) any private area; and

(iii) any common area, including a common area subject to an exclusive use arrangement”.

17. Accordingly, the matter was directly referred to adjudication in terms of Section 48 of the CSOS Act. The Ombud referred the application together with any submissions and responses thereto to an adjudicator on the **14th of April 2022**.

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

18. The Applicant submitted that their complex upkeep and maintenance is not being attended by the Respondents, and in supporting the same, the Applicant cited amongst others, the washing lines area that has rubble and long grass, the paint colour that is of three different shades, the damaged carports and the intercom system is not working.

19. The Applicant further submitted that when they enquire from the Respondent why are these not attended to, they are not provided with an explanation.
20. According to the Applicant, when he enquired about the complex' maintenance plan for big projects such as painting, the Respondent advised that painting is expensive.
21. The applicant further submitted that the Respondent was not enforcing the scheme's rules as residents were parking their cars on the grass and some residents were not complying with rules regarding the dogs.
22. The Applicant submitted that when its winter, the water pipes get frozen and burst as they are not insulated, and that when he had suggested that the Respondent attend to the same, he was told that it is expensive even though he had obtained a quote for the same which the Respondent's Managing Agents had found to be reasonable, however they later advised that the Respondent declined the same.
23. The Applicant further submitted that all his requests to have a meeting with everyone have been declined and that he also enquired as to when the AGM for year 2021 will be convened to which no response was provided.

Relief sought by the Applicant

24. Wherefore the Applicant prays for an order in the following terms.
 - (a) An order removing the Respondents as the trustees of the body corporate.

Respondent's Submissions

25. The Respondent failed to file written submissions despite the request for the same issued by CSOS Compliance Officer on the 3rd of April 2022.

Relief sought by the Respondents.

26. None submitted.

EVALUATION & FINDING

27. I have perused the parties' written submissions.
28. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
29. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighed up and determined whether the Applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
30. The Applicant seeks an order directing the removal of the Respondents and new trustees to be elected.
31. To enable the writer to make a finding relating to the relief sought by the Applicant against the Respondent, it is prudent to establish whether there is a lawful or alternatively a reasonable basis on which the relief prayed for by the Applicant may be granted.
32. The relief sought by the Applicant is not relief that is competent for an Adjudicator to grant in terms of Section 39 of the CSOS Act.
33. Having found that the Applicant's other prayer for relief does not fall within the scope of section 39 of the CSOS Act, readers are referred to section 38(3)(a) of the CSOS Act which specifically states that the application to CSOS for dispute resolution must include statements that set out the relief sought by the Applicant, **and in addition, the relief sought must be within the scope of one or more of the prayers for the relief contemplated in section 39 of the Act.**
34. Should any of the relief fall outside of the scope of the prayers of the relief as set out in section 39 of the Act as aforesaid, then the Adjudicator is not empowered to grant an order in terms of the Act.

35. Additional to the above, the Western Cape High Court in the case of **Trustees for the Time Being of the Avenues Body Corporate vs Shmaryahu and Another (A31/2018) [2018] ZAWCHC 54 2018 (4) SA 566 (WCC) (10 May 2018)** add **paragraph [17]**, held that “the character of the various types of substantive relief that an Adjudicator is empowered to grant in terms of the Act appears from the provisions of Section 39”.

36. The Adjudicator is therefore, not empowered in terms of the applicable legislative framework, to grant the relief sought by the Applicant against the Respondent.

37. Accordingly, the Applicant’s prayers for relief against the Respondent is dismissed, in terms of section **53 (1) (a) of the CSOS Act**.

COSTS

38. There is no order as to costs.

ADJUDICATION ORDER

39. In the circumstances, the following order is made:

- (a) The relief sought by the Applicant is dismissed, in terms of **section 53(1) (a) of the CSOS Act**.
- (b) No order as to costs.

RIGHT OF APPEAL

40. Section 57 of the CSOS Act, provides for the right of appeal-

- (1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.
- (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

DATED ON THIS 20TH DAY OF APRIL 2022.



**N FOCA
ADJUDICATOR**